IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Dr.O.P.Garg v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.1247/2003
under Article 226 of the Constitution of India.

Date of Order : 24th May, 2005

P R E S E N T
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi]
Mr. Rajat Dave] for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.

BY THE COURT :

On acquiring the age of superannuation the petitioner was retired from services while holding the post of Principal, Dr.S.N.Medical College, Jodhpur on 30.4.1996. Just prior to it a memorandum dated 24.4.1996 under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as “the Rules of 1958”) was served upon him charging misconduct sought to be inquired. The petitioner submitted an explanation on 13.10.1996 for allegations levelled against him. By an order dated 16.12.1996 the disciplinary authority appointed an inquiry officer to conduct the inquiry with regard to the allegations for which the petitioner was charged.

According to the petitioner in spite of his co-operation the inquiry was delayed, therefore, by way of filing a writ petition he approached this Court which came to be disposed of by judgment dated 24.4.2000 with directions for the respondents as under:-

> "Without entering into the merit of the case, the petition is disposed of finally with a direction that as the inquiry has been pending for last 4 years, the respondents are requested to conclude the inquiry and pass the appropriate order. The petitioner undertakes to co-operate with the inquiry and in case he does not co-operate the inquiry officer may record reasons and proceed ex parte. The inquiry may be concluded within a period of 4 months from the date of filing the certified copy of the order before the inquiry officer which the petitioner undertakes to file within 2 weeks. In case the inquiry is not concluded within 4 months, the respondents are directed to seek extension of time from this Court."

It is stated by the petitioner that neither the inquiry was concluded within the period prescribed nor any extension of time was sought by the respondents as ordered by this Court by judgment dated 24.4.2000, but he was served with a communication dated 23.8.2001 along with copy of inquiry report

submitted by the inquiry officer seeking his comments. In pursuant thereto the petitioner submitted a detailed representation dated 27.9.2001.

The disciplinary authority by an order dated 1.10.2002 after considering the report and the representation submitted by the petitioner remanded the case for denovo inquiry. The disciplinary authority ordered for denovo inquiry for the reason that during the inquiry proceeding oral as well as documentary evidence was not produced by the presenting officer before the inquiry officer but the inquiry officer himself exhibited the documentary evidence, accordingly sufficient opportunity was not given to the delinquent employee to defend himself.

The petitioner being aggrieved by the order dated 1.10.2002 submitted a representation to the disciplinary authority pointing out that no order could have been passed for holding the inquiry denovo in view of the provisions of sub-rule(9) of Rule 16 of the Rules of 1958. The request of the petitioner was rejected by the disciplinary authority by an order dated 10.2.2003, hence this writ petition is preferred praying as under:-

> "i.By an appropriate writ, order or direction, the order dtd.1.10,.2002 (Annex.8) and order dtd.10.2.2003(Annex.10) be declared illegal and be quashed with all consequential benefits to the petitioner.

ii.By an appropriate writ, order or direction, it may be declared that enquiry proceedings against the stood dropped on expiry of four months fixed by this Hon'ble Court vide order dtd.24.4.2000 and the respondents may be directed not to proceed in the matter.

iii.By an appropriate writ, order or direction, the respondents may be directed to release retirement dues of the petitioner along with interest @ 12% from the date the petitioner superannuated till the date of payment."

The relief claimed is mainly founded on two grounds which are :-

(1)Rule 16(9) of the Rules of 1958 empowers disciplinary authority to remand the case for denovo inquiry if the inquiry is laconic but not to meet the negligence or lacunae left by the prosecution or its presenting officer. In the present case the case is remanded for denovo inquiry to fill up the lacunaes of the prosecution and its presenting officer.

(2)The inquiry could not have been proceeded after a period of four months in view of the order passed by this Court on 24.4.2000 as neither the inquiry was completed in the said period nor any extension of time was sought and granted by the court to complete the inquiry.

A reply to the writ petition has been filed by the respondents stating therein that in view of sub-rule(9) of Rule 16 of the Rules of 1958 the disciplinary authority is empowered to order for holding inquiry denovo if the inquiry conducted appears to him laconic and in the instant case the disciplinary authority after perusing inquiry report and other relevant record reached at the conclusion that the presenting officer failed to produce relevant evidence and that effected the entire case, as such the order to hold inquiry denovo was rightly given.

The respondents in reply to the writ petition averred that on examination of record procedural mistake in inquiry was found and, therefore, the case was remanded for denovo inquiry. The relevant portion of the reply reads as under:-

> "List of witnesses and documentary evidence were received from both the sides and from the side of the defence a list of as many as 27 witnesses were submitted who were called for examination and 17 witnesses were examined and cross examined and the petitioner himself submitted his written statement on 29.12.2000 and he has also submitted his written arguments on 23.4.2001 and with great respect it is also most respectfully submitted that the Enquiry Officer thereupon after hearing the arguments as well as examining the material on record submitted his report on 9.8.2001

> in which 18 charges were found to be proved against the petitioner for which he was asked to submit his representation for the same which was submitted by him and the enquiry report and representation along with record of enquiry were examined up to the level of the Chief Minister under the Rules of Business and suggestion were also sought from the Public Service Commission.
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> To make it more clear it is, however, most respectfully submitted that on examination it has been found that there is procedural mistake in the said enquiry and the said enquiry was not conducted in accordance with the rules and, therefore, the said enquiry was remanded to the Divisional Commissioner, Jodhpur for making re-enquiry in the matter by the order dt.21.10.2002 vide Annex.P/8 attached with the writ petition."

The respondents in their reply specifically stated that the statements of witnesses were recorded by the inquiry officer. The inquiry officer submitted his report after considering entire material available on record. The matter was also referred to Rajasthan Public Service Commission and suggestions were also sought from the commission. The respondents also stated in the reply that an application was filed before this Court in writ petition No.4006/99 seeking extension of time in completing the inquiry, however, no order was passed by the Court on that application.

During the course of argument it was verified from the registry of the Court that such an application was filed by the respondents but the same was filed after expiry of the period of four months.

A rejoinder to the reply has been filed on behalf of the petitioner mainly reiterating the facts stated in the writ petition.

I have heard the counsel for the parties.

Sub-rule(9) of Rule 16 of the Rules of 1958 provides that a case can be remanded for holding inquiry denovo in the event the disciplinary authority is having reason to believe that the inquiry already conducted has been laconic in some respect or the other. The disciplinary authority by order dated 1.10.2002 ordered for holding inquiry denovo on the count that the presenting officer failed to produce witnesses and the documents and the documents were exhibited by the inquiry officer. Precisely the Court in present case is required to see as to whether failure on part of prosecution to produce certain witnesses and documents could be held a lacunae in inquiry. In an inquiry prosecution and delinquent are two parties before the inquiry officer who is required to act in just and fair manner with all impartiality. The sole object of the inquiry officer is to make a prob with regard to charges alleged by giving fair

opportunity to prove the charges and also to the delinquent to defend himself. If the prosecution or its presenting officer fails to produce sufficient evidence oral or documentary, it cannot be said a lacunae in inquiry. The failure on part of the prosecution to prove charges does not make the inquiry proceedings laconic. An inquiry could be held laconic if it is in violation of mandatory provisions of the Rules of 1958, if it is in violation of principles of natural justice, if the findings of the inquiry officer are not supported by the reasons or any act of the prosecution or the inquiry officer had effected rights of the delinquent prejudicially.

I have gone through the entire inquiry report and from reading of the same it reveals that the inquiry officer recorded statements of 17 witnesses and he also examined various documents. The inquiry officer on basis of evidence available on record gave his findings. The disciplinary authority reached at the conclusion that sufficient evidence was not produced by the presenting officer to prove the charge then under Sub-rule(9) of Rule 16 of the Rules of 1958 he is not having any power to order for holding the inquiry denovo. A denovo inquiry could be ordered only if the inquiry is found laconic.

In the present case no such circumstance is available. The inquiry officer has remanded the case

for denovo inquiry only on the count that the prosecution and its presenting officer failed to produce sufficient oral and documentary evidence. In view of sub-rule(9) of Rule 16 of the Rules of 1958 this cannot be a reason to hold the inquiry laconic, the respondents in their reply too stated that a procedural lacunae was found in inquiry, however, what was that lacunae, nothing is said about that, as such in my considered opinion the order dated 1.10.2002 is not sustainable in eye of law.

The second contention of the counsel for the petitioner also deserves acceptance as this Court by its judgment dated 24.4.2000 in quite unambiguous terms directed the respondents to complete the inquiry proceedings within a period of four months or to move an application for extension of time for holding the inquiry. The respondents admittedly failed to complete the inquiry within the period prescribed. No application for extension of time was filed by the respondents within the period prescribed. The respondents also not cared to get the application listed before the Court for orders on it. The respondents were not at all diligent to pursue the application and to obtain order upon it.

The order passed by the Court on 24.4.2000 is quite clear. It specifically mentions that the inquiry is required to be completed within a period of

four months and if for any reason the respondents failed to do so then it was left open for them to move an application for extension of time. The conduct of the respondents clearly shows that they were not at all interested in getting any extension of time in holding the inquiry. In view of it the inquiry proceedings and any decision thereon after completion of the period prescribed by the Court was without authority of law. Accordingly the inquiry proceeding after expiry of the period of four months as prescribed by this Court by the order dated 24.4.2000 deserves to be declared non-est.

In view of whatever discussed above, this writ petition is allowed. The disciplinary proceedings conducted by the respondents after completion of period of four months from 24.4.2000 are declared non-est and the same are hereby quashed. All the orders including the order dated 1.10.2002 passed by the respondents under the inquiry proceedings impugned are hereby quashed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.